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 13 James Doherty

14 UNITED STATES DISTRICT COURT  
 15 NORTHERN DISTRICT OF CALIFORNIA

16 James Doherty,

17 Plaintiff,

18 vs.

19 Midland Credit Management, Inc.; and  
 20 DOES 1-10, inclusive,

21 Defendants.

Case No.:

C13- 757 DMR

COMPLAINT FOR DAMAGES

1. VIOLATION OF FAIR DEBT  
 COLLECTION PRACTICES ACT,  
 15 U.S.C. § 1692 ET. SEQ;  
 2. VIOLATION OF FAIR DEBT  
 COLLECTION PRACTICES ACT,  
 CAL.CIV.CODE § 1788 ET. SEQ.  
 3. VIOLATION OF THE  
 TELEPHONE CONSUMER  
 PROTECTION ACT, 47 U.S.C. § 227,  
 ET.SEQ.

JURY TRIAL DEMANDED

1 For this Complaint, the Plaintiff, James Doherty, by undersigned counsel, states  
2 as follows:  
3

4 **JURISDICTION**

5 1. This action arises out of Defendants' repeated violations of the Fair Debt  
6 Collection Practices Act, 15 U.S.C. § 1692, *et. seq.* ("FDCPA"), violations of the  
7 Telephone Consumer Protection Act, 47 U.S.C. § 227, *et. seq.* ("TCPA"), and the  
8 invasions of Plaintiff's personal privacy by the Defendants and its agents in their  
9 illegal efforts to collect a consumer debt.  
10

11 2. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367.  
12

13 3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that  
14 Defendants transact business here and a substantial portion of the acts giving rise to  
15 this action occurred here.  
16

17 **PARTIES**

18 4. The Plaintiff, James Doherty (hereafter "Plaintiff"), is an adult individual  
19 residing in San Francisco, California, and is a "consumer" as the term is defined by 15  
20 U.S.C. § 1692a(3), and is a "person" as defined by 47 U.S.C. § 153(10).  
21

22 5. Defendant Midland Credit Management, Inc. ("Midland"), is a California  
23 business entity with an address of 8875 Aero Drive, Suite 200, San Diego, California,  
24 92123, operating as a collection agency, and is a "debt collector" as the term is  
25 defined by 15 U.S.C. § 1692a(6), and is a "person" as defined by 47 U.S.C. § 153(10).  
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1           6. Does 1-10 (the "Collectors") are individual collectors employed by  
2 Midland and whose identities are currently unknown to the Plaintiff. One or more of  
3 the Collectors may be joined as parties once their identities are disclosed through  
4 discovery.  
5

6           7. Midland at all times acted by and through one or more of the Collectors.  
7

8                   **ALLEGATIONS APPLICABLE TO ALL COUNTS**

9       **A. The Debt**

10           8. The Plaintiff allegedly incurred a financial obligation (the "Debt") to T-  
11 Mobile (the "Creditor").  
12

13           9. The Debt arose from services provided by the Creditor which were  
14 primarily for family, personal or household purposes and which meets the definition  
15 of a "debt" under 15 U.S.C. § 1692a(5).  
16

17           10. The Debt was purchased, assigned or transferred to Midland for  
18 collection, or Midland was employed by the Creditor to collect the Debt.  
19

20           11. The Defendants attempted to collect the Debt and, as such, engaged in  
21 "communications" as defined in 15 U.S.C. § 1692a(2).  
22

23       **B. Midland Engages in Harassment and Abusive Tactics**

24           12. Within the last year, Midland contacted Plaintiff in an attempt to collect  
25 the Debt.  
26  
27  
28

1           13. During the initial conversation and during each conversation thereafter,  
2 Plaintiff advised Midland that he disputed the Debt and requested something in  
3 writing from Midland.  
4

5           14. During several conversations, Plaintiff attempted to explain to  
6 Defendants that he disputed the validity of the Debt and that he had already disputed  
7 the Debt with the Creditor and all three credit bureaus.  
8

9           15. While attempting to discuss his dispute, Midland would sometimes place  
10 Plaintiff on hold for several minutes, and then transfer him to a non-working  
11 extension. Other times, Defendants would terminate the call when Plaintiff requested  
12 to speak with a supervisor regarding his dispute.  
13

14           16. Plaintiff asked for Midland to provide him something in writing  
15 regarding the Debt. Midland responded by telling Plaintiff that it was not required to  
16 send him anything in writing.  
17

18           17. Plaintiff repeatedly requested that Midland cease all communications  
19 with him and unambiguously stated a complete unwillingness to pay Midland.  
20

21           18. Despite his requests to cease communications with Plaintiff, Midland  
22 continued to contact Plaintiff, knowing that its calls would not result in the payment of  
23 the Debt.  
24

25           19. Midland contacted at an excessive and harassing rate, sometimes calling  
26 Plaintiff five times a day on a daily basis.  
27  
28

1           20. Midland did not send Plaintiff a letter within five days of its initial  
2 contact with him as required by law.  
3

4                                   **COUNT I**  
5                   **VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT**  
6                                   **15 U.S.C. § 1692, et seq.**

7           21. The Plaintiff incorporates by reference all of the above paragraphs of this  
8 Complaint as though fully stated herein.

9           22. The Defendants engaged in behavior the natural consequence of which  
10 was to harass, oppress, or abuse the Plaintiff in connection with the collection of a  
11 debt, in violation of 15 U.S.C. § 1692d.  
12

13           23. The Defendants caused a phone to ring repeatedly and engaged the  
14 Plaintiff in telephone conversations, with the intent to annoy and harass, in violation  
15 of 15 U.S.C. § 1692d(5).  
16

17           24. The Defendants used false, deceptive, or misleading representation or  
18 means in connection with the collection of a debt, in violation of 15 U.S.C. § 1692e.  
19

20           25. The Defendants failed to send Plaintiff an initial letter within five days of  
21 its initial contact with Plaintiff as required by law, in violation of 15 U.S.C. §  
22 1692g(a).  
23

24           26. The foregoing acts and omissions of the Defendants constitute numerous  
25 and multiple violations of the FDCPA, including every one of the above-cited  
26 provisions.  
27  
28

1           27. The Plaintiff is entitled to damages as a result of the Defendants'  
2 violations.  
3

4                                   **COUNT II**  
5                                   **VIOLATION OF THE ROSENTHAL FAIR DEBT COLLECTION**  
6                                   **PRACTICES ACT, Cal. Civ. Code § 1788 et seq.**

7           28. The Plaintiff incorporates by reference all of the above paragraphs of this  
8 Complaint as though fully stated herein.

9           29. The Rosenthal Fair Debt Collection Practices Act, California Civil Code  
10 section 1788 et seq. ("Rosenthal Act") prohibits unfair and deceptive acts and  
11 practices in the collection of consumer debts.  
12

13           30. Midland Credit Management, Inc., in the regular course of business,  
14 engages in debt collection and is a "debt collector" as defined by Cal. Civ. Code §  
15 1788.2(c).  
16

17           31. The Defendants caused a telephone to ring repeatedly and engaged the  
18 Plaintiff in continuous conversations with an intent to annoy the Plaintiff, in violation  
19 of Cal. Civ. Code § 1788.11(d).  
20

21           32. The Defendants communicated with the Plaintiff with such frequency as  
22 to be considered harassment, in violation of Cal. Civ. Code § 1788.11(e).  
23

24           33. The Defendants failed to comply with the provisions of 15 U.S.C. §  
25 1692, *et seq.*, in violation of Cal. Civ. Code § 1788.13(e).  
26  
27  
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1           34. The Defendants did not comply with the provisions of Title 15, Section  
2 1692 of the United States Code, in violation of Cal. Civ. Code § 1788.17.

3  
4           35. The Plaintiff is entitled to damages as a result of the Defendants'  
5 violations.

6  
7                                   **COUNT III**  
8                   **VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT –**  
9                                   **47 U.S.C. § 227, et seq.**

10           36. Plaintiff incorporates by reference all of the above paragraphs of this  
11 Complaint as though fully stated herein.

12           37. At all times mentioned herein and within the last four years, Midland  
13 contacted Plaintiff on his cellular telephone using an automated telephone dialing  
14 system ("ATDS") and/or by using artificial or pre-recorded messages in violation 47  
15 U.S.C. § 227(b)(1)(A)(iii).

16  
17           38. Often times when Plaintiff answered the calls from Midland, Plaintiff  
18 was met with dead air and there was not a live person with whom Plaintiff could  
19 speak. Other times, after a long period of dead air, a live representative became  
20 available.

21  
22           39. The telephone number called by Defendant was assigned to a cellular  
23 telephone service for which Plaintiff incurs charges for incoming calls pursuant to 47  
24 U.S.C. § 227(b)(1).



1        40. Plaintiff never provided his cellular telephone number to Midland and  
2 never provided his consent to be contacted on his cellular telephone.

3  
4        41. Plaintiff never provided his cellular telephone number to the Creditor and  
5 never provided his consent to the Creditor to be contacted on his cellular telephone.

6  
7        42. If Midland at one time had prior express consent to place calls to  
8 Plaintiff's cellular telephone number, it no longer had consent to call Plaintiff after  
9 being repeatedly instructed by Plaintiff to cease all calls to him.

10  
11        43. The calls from Defendant to Plaintiff were not placed for "emergency  
12 purposes" as defined by 47 U.S.C. § 227(b)(1)(A)(i).

13        44. Each of the aforementioned calls made by Defendant constitutes a  
14 negligent or intentional violation of the TCPA, including each of the aforementioned  
15 provisions of 47 U.S.C. § 227, *et. seq.*

16  
17        45. As a result of each of Defendant's negligent violations of the TCPA,  
18 Plaintiff is entitled to an award of \$500.00 in statutory damages for each call in  
19 violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

20  
21        46. As a result of each of Defendant's knowing and/or willful violations of  
22 the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to  
23 \$1,500.00 for each and every violation of the TCPA pursuant to 47 U.S.C. §  
24 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).  
25  
26  
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**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff prays that judgment be entered against the Defendants:

- A. Actual damages pursuant to 15 U.S.C. § 1692k(a)(1) against the Defendants;
- B. Statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A) against the Defendants;
- C. Costs of litigation and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k(a)(3) against the Defendants;
- D. Actual damages pursuant to Cal. Civ. Code § 1788.30(a);
- E. Statutory damages of \$1,000.00 for knowingly and willfully committing violations pursuant to Cal. Civ. Code § 1788.30(b);
- F. Statutory and/or treble damages pursuant to 47 U.S.C. § 227(b)(3)(B) & (C);
- G. Actual damages from the Defendants for the all damages including emotional distress suffered as a result of the intentional, reckless, and/or negligent FDCPA violations and intentional, reckless, and/or negligent invasions of privacy in an amount to be determined at trial for the Plaintiff;
- H. Punitive damages; and

1 I. Such other and further relief as may be just and proper.  
2

3 **TRIAL BY JURY DEMANDED ON ALL COUNTS**  
4  
5

6  
7 DATED: February 15, 2013

TAMMY HUSSIN

8  
9 By: /s/ Tammy Hussin  
10 Tammy Hussin, Esq.  
11 Lemberg & Associates  
12 Attorney for Plaintiff James Doherty  
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